

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0061P**

**Income Tax**

**Fiscal Years February 28, 1994, February 28, 1995, and February 29, 1996**

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**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

**STATEMENT OF FACTS**

The negligence penalty was assessed on an income tax assessment resulting from an audit conducted for the fiscal years ending February 28, 1994, February 28, 1995, and February 29, 1996.

The taxpayer's principal business is to rent motor vehicles to the general public which includes corporate customers. The taxpayer has several locations in Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer argues the penalty should be waived as the taxpayer has timely filed tax returns and no gross negligence has occurred. The audit dealt with the assessment of high rate gross income tax on service income. The Department points out the error was material.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or

regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer is inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer’s penalty protest is denied.